

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SUSAN L., )  
Plaintiff, ) CASE NO. C20-5303-MAT  
v. )  
ANDREW M. SAUL, ) ORDER RE: SOCIAL SECURITY  
Commissioner of Social Security, ) DISABILITY APPEAL  
Defendant. )

Plaintiff proceeds through counsel in her appeal of a final decision of the Commissioner of the Social Security Administration (Commissioner). The Commissioner denied Plaintiff's application for Disability Insurance Benefits (DIB) after a hearing before an Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, this matter is REVERSED and REMANDED for further administrative proceedings.

## FACTS AND PROCEDURAL HISTORY

Plaintiff was born on XXXX, 1967.<sup>1</sup> She has an associate's degree, and previously worked as a warehouse administrator, customer service representative, and receptionist. (AR

<sup>1</sup> Dates of birth must be redacted to the year. Fed. R. Civ. P. 5.2(a)(2) and LCR 5.2(a)(1).

01 44, 230.)

02 Plaintiff applied for DIB in January 2016. (AR 156-59.) That application was denied  
 03 and Plaintiff timely requested a hearing. (AR 120-23, 125-32.)

04 In July 2018, ALJ Paula Fow Atchison held a hearing in Phoenix, taking testimony  
 05 from Plaintiff and a vocational expert. (AR 37-75.) On January 15, 2019, the ALJ issued a  
 06 decision finding Plaintiff not disabled. (AR 15-28.) Plaintiff timely appealed. The Appeals  
 07 Council denied Plaintiff's request for review in January 2020 (AR 1-6), making the ALJ's  
 08 decision the final decision of the Commissioner. Plaintiff appealed this final decision of the  
 09 Commissioner to this Court.

10 **JURISDICTION**

11 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. §  
 12 405(g).

13 **DISCUSSION**

14 The Commissioner follows a five-step sequential evaluation process for determining  
 15 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it  
 16 must be determined whether the claimant is gainfully employed. The ALJ found Plaintiff had  
 17 not engaged in substantial gainful activity between her alleged onset date (December 5, 2014)  
 18 and her date last insured (DLI) of March 31, 2018. (AR 17-18.) At step two, it must be  
 19 determined whether a claimant suffers from a severe impairment. The ALJ found that  
 20 through the DLI, Plaintiff's osteoarthritis, diabetes, peripheral neuropathy, inflammatory  
 21 bowel disease, chronic pain, degenerative disc disease, and Crohn's disease were severe  
 22 impairments. (AR 18-21.) Step three asks whether a claimant's impairments meet or equal a

01 listed impairment. The ALJ found that through the DLI, Plaintiff's impairments did not meet  
02 or equal the criteria of a listed impairment. (AR 21.)

03 If a claimant's impairments do not meet or equal a listing, the Commissioner must  
04 assess residual functional capacity (RFC) and determine at step four whether the claimant has  
05 demonstrated an inability to perform past relevant work. The ALJ found that through the  
06 DLI, Plaintiff was capable of performing light work with additional limitations: she could not  
07 be exposed to dangerous machinery or unprotected heights. She could occasionally climb  
08 ladders, ropes, and scaffolds. She could frequently climb ramps and stairs, balance, stoop,  
09 kneel, crouch, crawl, handle, and finger. (AR 21.) With that assessment, the ALJ found that  
10 through the DLI, Plaintiff could perform her past work as a collection clerk, cashier's  
11 supervisor, and label stamper. (AR 27.)

12 If a claimant demonstrates an inability to perform past relevant work, the burden shifts  
13 to the Commissioner to demonstrate at step five that the claimant retains the capacity to make  
14 an adjustment to work that exists in significant levels in the national economy. Because the  
15 ALJ found that Plaintiff could perform her past work, the ALJ did not proceed to step five.  
16 (AR 27-28.)

17 This Court's review of the ALJ's decision is limited to whether the decision is in  
18 accordance with the law and the findings supported by substantial evidence in the record as a  
19 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means  
20 more than a scintilla, but less than a preponderance; it means such relevant evidence as a  
21 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881  
22 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which

01 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278  
 02 F.3d 947, 954 (9th Cir. 2002).

03 Plaintiff argues the ALJ erred in (1) finding various impairments to be not severe at  
 04 step two, (2) discounting her subjective symptom testimony, (3) assessing certain medical  
 05 evidence and opinions, and (4) discounting lay evidence.<sup>2</sup> The Commissioner argues that the  
 06 ALJ's decision is supported by substantial evidence and should be affirmed.

07 Step two

08 At step two, a claimant must make a threshold showing that her medically  
 09 determinable impairments significantly limit her ability to perform basic work activities. *See*  
 10 *Bowen v. Yuckert*, 482 U.S. 137, 145 (1987); 20 C.F.R. §§ 404.1520(c), 416.920(c). “Basic  
 11 work activities” refers to “the abilities and aptitudes necessary to do most jobs.” 20 C.F.R. §§  
 12 404.1522(b), 416.922(b). “An impairment or combination of impairments can be found ‘not  
 13 severe’ only if the evidence establishes a slight abnormality that has ‘no more than a minimal  
 14 effect on an individual’s ability to work.’” *Smolen v. Chater*, 80 F.3d 1273, 1290 (9th Cir.  
 15 1996) (quoting Social Security Ruling 85-28).

16 In this case, the ALJ found multiple conditions to be not severe at step two. (AR 18-  
 17 21.) Plaintiff argues that the ALJ’s analysis was not supported by substantial evidence and  
 18 this error caused harm because the ALJ’s RFC assessment fails to account for all of Plaintiff’s  
 19 limitations, including limitations caused by non-severe impairments. Dkt. 16 at 3-4.

20 Plaintiff fails to identify any particular omitted limitations caused by the impairments

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21 <sup>2</sup> Plaintiff also assigns error to the ALJ’s RFC assessment and step-four findings, but in doing  
 22 so only reiterates arguments made in connection with the other assignments of error. Dkt. 16 at 19.  
 The Court need not address this assignment of error separately.

01 found to be non-severe, however. Dkt. 16 at 3-4. This failure is fatal to Plaintiff's claim of  
02 harmful step-two error. *See Lewis v. Astrue*, 498 F.3d 909, 911 (9th Cir. 2007). Because  
03 Plaintiff has not shown that the ALJ's step-two findings resulted in the omission of any  
04 particular limitation, the Court finds no harmful error in the ALJ's finding certain conditions  
05 to be not severe.

06 Subjective symptom testimony

07 The ALJ discounted Plaintiff's allegations because "the evidence generally does not  
08 support the alleged loss of functioning." (AR 24.) Plaintiff argues that the ALJ failed to  
09 provide a specific, clear, and convincing reason to discount her testimony, as required in the  
10 Ninth Circuit. *Burrell v. Colvin*, 775 F.3d 1133, 1136-37 (9th Cir. 2014).

11 The Court agrees that the ALJ's discussion of Plaintiff's allegations fails to identify  
12 any reason sufficient to discount her testimony. The ALJ summarized the medical records  
13 that she found supported the RFC assessment, but did not identify any particular reasons to  
14 discount Plaintiff's allegations. (AR 24-27.) This type of summary is insufficient to support  
15 discounting a claimant's testimony. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 493-94 (9th  
16 Cir. 2015) (finding legal error where ALJ failed to identify the testimony found not credible  
17 or to link testimony to the parts of record supporting the assessment of the claimant's  
18 credibility, and instead stated "only that she found, based on unspecified claimant testimony  
19 and a summary of medical evidence, that 'the functional limitations from the claimant's  
20 impairments were less serious than she has alleged'").

21 Although the Commissioner points to parts of the records that suggest Plaintiff  
22 engaged in activities inconsistent with her allegations or reported improvement with treatment

01 (Dkt. 20 at 11-12), the ALJ did not refer to this evidence to explain why the record  
 02 undermined Plaintiff's allegations. The Commissioner also contrasted parts of Plaintiff's  
 03 testimony with certain treatment notes (Dkt. 20 at 11), but again, the ALJ did not do so.  
 04 Notably, the Commissioner's section addressing the ALJ's assessment of Plaintiff's testimony  
 05 does not refer to the ALJ's decision at all, but instead directs the Court's attention to records  
 06 that the Commissioner argues constitute substantial evidence support the ALJ's finding that  
 07 Plaintiff's reporting was not entirely reliable. Dkt. 20 at 10-12. Because the Court is  
 08 constrained to review the ALJ's decision itself, and finds that the ALJ's summary of the  
 09 medical evidence does not constitute on its own a reason to discount Plaintiff's testimony, the  
 10 Court finds that the ALJ erred in failing to provide legally sufficient reasons to discount  
 11 Plaintiff's testimony.

12 Medical opinion evidence

13 One of Plaintiff's treating doctors, Mark Goldberg, M.D., provided multiple checkbox  
 14 form opinions describing Plaintiff's symptoms and limitations. (AR 398-99, 614-15, 1108-  
 15 09.) The ALJ summarized the opinions (AR 26-27) and explained in one sentence why she  
 16 gave them minimal weight: "These opinions are not consistent with the record as a whole."  
 17 (AR 27.)

18 The ALJ may reject physicians' opinions "by setting out a detailed and thorough  
 19 summary of the facts and conflicting clinical evidence, stating his interpretation thereof, and  
 20 making findings." *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes v.*  
 21 *Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989)). Rather than merely stating his conclusions, the  
 22 ALJ "must set forth his own interpretations and explain why they, rather than the doctors', are

01 correct.” *Reddick*, 157 F.3d at 725 (citing *Embrey v. Bowen*, 849 F.2d 418, 421-22 (9th Cir.  
02 1988)).

03 Here, the ALJ stated her conclusion that Dr. Goldberg’s opinions were inconsistent  
04 with the “record as a whole”, but did not identify any particular inconsistencies. (AR 27.)  
05 The Commissioner suggests (Dkt. 20 at 8) that the Court should look to the evidence cited by  
06 the ALJ in finding that Plaintiff could perform a range of light work, as the evidence the ALJ  
07 had in mind as inconsistent with Dr. Goldberg’s opinions. The Court declines the invitation  
08 to wade through the medical records to determine if or to what extent they are inconsistent  
09 with Dr. Goldberg’s opinions. Because the ALJ failed to provide any analysis beyond a mere  
10 conclusion, the Court finds that the ALJ erred in assessing Dr. Goldberg’s opinions.

11 Plaintiff also argues that the ALJ failed to account for limitations suggested in credited  
12 opinions from examining providers, but fails to point to any part of the credited opinions that  
13 specifically identifies any limitation not included in the ALJ’s RFC assessment. Dkt. 16 at 7-  
14 8. Accordingly, the Court finds no error in the ALJ’s assessment of the examining source  
15 opinions.

16 Lastly,<sup>3</sup> Plaintiff argues that the ALJ erred in crediting State agency opinions because  
17 these non-examining source opinions are generally entitled to less weight than the opinions of  
18 treating or examining sources, and because the State agency consultants did not have the  
19 opportunity to review the entire record. Dkt. 16 at 13. Plaintiff has not shown that the ALJ  
20 erred in crediting the opinions, however, because she has not shown that the opinions were

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22 <sup>3</sup> Plaintiff’s opening brief also contains a lengthy summary of miscellaneous medical findings.  
Dkt. 16 at 8-13. This summary does not advance Plaintiff’s assignment of error in the ALJ’s decision  
and need not be addressed further.

01 contradicted by the remainder of the record. *See Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th  
 02 Cir. 1995). Furthermore, the ALJ explicitly considered the State agency opinions in the  
 03 context of the record as a whole. (AR 27.) Thus, the Court finds no error in the ALJ's  
 04 assessment of the State agency opinions.

05 Lay evidence

06 Plaintiff's mother, Julie Mansfield, wrote a statement describing Plaintiff's symptoms  
 07 and limitations. (AR 240-47.) The ALJ summarized Ms. Mansfield's statement and  
 08 explained that she considered it "in as much as it was consistent with the medical evidence  
 09 record and the record as a whole[.]" (AR 27.)

10 Plaintiff argues that the ALJ failed to provide germane reasons to discount Ms.  
 11 Mansfield's statement, as required in the Ninth Circuit. *See Dodrill v. Shalala*, 12 F.3d 915,  
 12 919 (9th Cir. 1993) ("If the ALJ wishes to discount the testimony of the lay witnesses, he  
 13 must give reasons that are germane to each witness."). The Commissioner contends that an  
 14 ALJ is entitled to discount a lay witness statement that is inconsistent with the record (Dkt. 20  
 15 at 10), which may be true, but the ALJ here did not explicitly find Ms. Mansfield's statement  
 16 to be inconsistent with the record and did not refer to any part of the record contradicting Ms.  
 17 Mansfield's statement. The ALJ's conclusory finding does not constitute a germane reason to  
 18 discount Ms. Mansfield's opinion.

19 CONCLUSION

20 For the reasons set forth above, this matter is REVERSED and REMANDED for  
 21 further administrative proceedings. On remand, the ALJ should reconsider Plaintiff's  
 22 testimony, Dr. Goldberg's opinions, and Ms. Mansfield's statement, and any other part of the

01 decision as necessary.

02 DATED this 6th day of April, 2021.



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04 Mary Alice Theiler  
05 United States Magistrate Judge  
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